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~~SUPREME~~ COURT OF THE STATE OF WASHINGTON
CLERK

In Re Stephen Eugster,

Attorney at Law.

} Case No.: 200,568-3

} APPELLANT'S STATEMENT OF
} ADDITIONAL AUTHORITIES
} RAP 10.8

The following publication from the Washington State Attorney General's
Office is submitted as additional authorities:

Vulnerable Adult Initiative: 2008 Final Report (attached)

Page 6 describes "Why are the Elderly Targeted?" ("An increased likelihood of
loneliness and physical isolation presents an opening for those who wish to exploit
them.")

Page 7 lists "Who are the Perpetrators?" ("Anyone: lawyers, guardians, financial
planners or strangers.")

Dated: 9/17/08
Olympia, WA

Shawn Timothy Newman
Attorney for Appellant

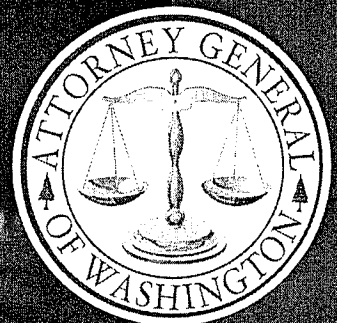
APPELLANT'S STATEMENT OF
ADDITIONAL AUTHORITIES

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VULNERABLE ADULT INITIATIVE

2008 FINAL REPORT





VULNERABLE ADULT INITIATIVE

2008 FINAL REPORT

Washington State Office of Attorney General
ROB MCKENNA



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INTRODUCTION

MESSAGE FROM THE ATTORNEY GENERAL

FELLOW WASHINGTONIANS,

Emerging changes in our state are putting a growing number of our family members, friends and neighbors at risk. The physical, emotional and financial abuse and neglect of vulnerable adults, those in their senior years or those over 18 with mental or physical disabilities, is on the rise and demands our attention.

A third of our country's population — more than 77 million souls — will reach retirement in the next few years. While senior years should be filled with well-deserved family time, travel and reflection, for too many of our neighbors, this time presents a rising susceptibility to criminal victimization.



In recent years, our Consumer Protection Division and Medicaid Fraud Control Unit have seen a steady increase in the frequency with which fraud-related cases involve the exploitation and abuse of older adults.

Often isolated, sometimes struggling with poor health and frequently not knowing where to turn for help, more vulnerable adults fall prey to crimes specifically targeted against them. Unfortunately, criminals have seized upon a fact that all of us need to recognize: that these kinds of crimes are rarely reported. In fact, only one in five cases of abuse of a vulnerable adult is ever reported.

We can do better.

Fortunately concerned citizens in the public and private sectors have stepped forward to confront these life-and-death issues. On June 7, 2007, I initiated a summit to confront these very challenges. Concerned caregivers, advocates, law-enforcement officials, social workers and assorted experts from around the state met for one very productive day: The Vulnerable Adult Summit. We concluded the day with a detailed, preliminary inventory of the critical challenges facing vulnerable adults.

The next order of business was to form work groups charged with developing solutions to these challenges. This document, the result of countless hours of thoughtful consideration by some of our state's most dedicated individuals, contains highlights from our work groups' recommendations.

Thank you to the nearly 100 devoted professionals who attended our summit and dedicated the time, effort and determination required to produce the contents of this report. Your contributions have provided the roadmap to create a safer life for some of our most vulnerable citizens.

Sincerely,



Rob McKenna
Attorney General of Washington State



OVERVIEW

VULNERABLE ADULTS: AN OVERVIEW

NATIONAL AND STATE STATISTICS ON THE ABUSE OF VULNERABLE ADULTS

The statistics are startling: beginning Jan. 1, 2006, a baby boomer turns 60 at the rate of 1 per 7.5 seconds.

As “boomers” enter an age of increased vulnerability, they are more and more frequently becoming victims of abuse. According to the National Center on Elder Abuse, between 500,000 and 5 million seniors are abused every year in the United States. Frighteningly, these instances of abuse are somewhat unlikely to be reported. Experts suggest that only 1 in 5 — and possibly only 1 in 12 — abuse cases are ever reported. From 1986 to 1996, state and federal government data suggest that there has been a 150 percent increase in reports of elder abuse in domestic settings (*National Center on Elder Abuse National Incidence Summary, September 1998*).

Our state's Adult Protective Services (APS) program received 13,136 reports of abuse, abandonment, neglect, self-neglect and financial exploitation in 2006 alone. In 2006, APS received more reports of allegations of financial exploitation against vulnerable adults than *any other kind of mistreatment*.

WHO ARE CONSIDERED “VULNERABLE ADULTS” IN WASHINGTON STATE?

State law defines “*vulnerable adults*” as those:

- 60 years of age or older with a functional, physical or mental inability to care for themselves; or
- 18 years of age or older who:
 - Have certain developmental disabilities;
 - Have a guardian as per chapter 11.88 RCW;
 - Live in a nursing home, boarding home (assisted living facility), adult family home or soldier's home;



- Receive in-home services through a licensed health care agency, hospice or individual provider; and
- Self-direct their own care (criteria outlined in RCW 74.39.050).

WHY ARE THE ELDERLY TARGETED?

- Older adults typically have accumulated more wealth and assets.
- Older adults possess more physical vulnerability.
- An increased likelihood of loneliness and physical isolation presents an opening for those who wish to exploit them.

Perpetrators may be anyone, including lawyers, guardians, financial planners, or strangers.

- They often have love or affection for the perpetrator, who might be a friend, neighbor or family member.
- The frequency of cognitive or memory impairment increases an easily exploitable vulnerability.
- They often lack the skills or knowledge needed to find help.
- They present a reduced risk to the perpetrator of getting caught or prosecuted because:
 - They possess memory challenges, impacting the credibility of charges brought;
 - They may die before they are able to testify;
 - They are sometimes embarrassed to reveal their situation;
 - Victims often deny the crime;
 - They may be dependant on the abuser for assistance.

WHAT IS CONSIDERED AS MISTREATMENT OF A VULNERABLE ADULT?

- Physical, sexual or emotional abuse.
- Abandonment.
- Neglect.
- Financial exploitation.

WHO ARE THE PERPETRATORS?

- 52 percent are men and 48 percent are women (*National Elder Abuse Incidence Study 1999*).
- 85 – 90 percent are family members (*National Elder Abuse Incidence Study 1999*).
- Individuals who are chronically unemployed or underemployed.
- Individuals who are financially dependent upon an elder.
- Those suffering from drugs, alcohol or mental health issues.
- Anyone: lawyers, guardians, financial planners or strangers.
- Any race, religion or national origin.

These statistics were on the minds of our summit participants as they gathered in Tumwater in June of 2007. The following describes the work of the Vulnerable Adult Summit and of the resulting work groups over the last year.





VULNERABLE ADULT SUMMIT

SUMMIT OVERVIEW

The Attorney General invited more than 100 professionals from around the state to participate in a Vulnerable Adult Summit on June 1, 2007, at the Tumwater Office of the Attorney General.

Including Attorney General's Office (AGO) staff and facilitators, 99 people attended. The participants included law enforcement officials, health care providers, prosecutors, legislators, social workers, bankers and advocates, to name a few. The participants were selected from throughout the state to represent communities large and small, rural, urban, eastern and western. While the problem is complex, the goal was simple: better protect our fastest-growing age demographic — the elderly and disabled adults — from abuse, neglect, criminal mistreatment and financial exploitation.

Summit participants were tasked by Attorney General McKenna and the summit co-chairs to identify the critical issues impacting vulnerable adults. By the end of the session, summit participants had established a list of nearly 90 areas of concern — issues that could be addressed by lawmakers, caregivers, advocates and the community at large. The full list may be found at <http://www.atg.wa.gov/vulnerableadults.aspx>. Many of these items are also listed in the work group summaries below, as they pertain to the final recommendations of those work groups.

At the summit's conclusion, participants were asked to identify themselves and others as possible contributors to solution-oriented

work groups. Work groups were subsequently assembled and presented their reports to Attorney General McKenna on May 9, 2008.

What follows is a detailed look at many of the urgent issues identified at the summit, and summaries of the resulting work group reports. Complete reports are available at atg.wa.gov.

Including AGO staff and facilitators, 99 people were in attendance.

SUMMIT CO-CHAIRS

Dawn Cortez - Director,
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Lori Melchoiri - Program
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WORK GROUPS

VULNERABLE ADULT INITIATIVE WORK GROUPS OVERVIEW

WORK GROUP CO-CHAIRS

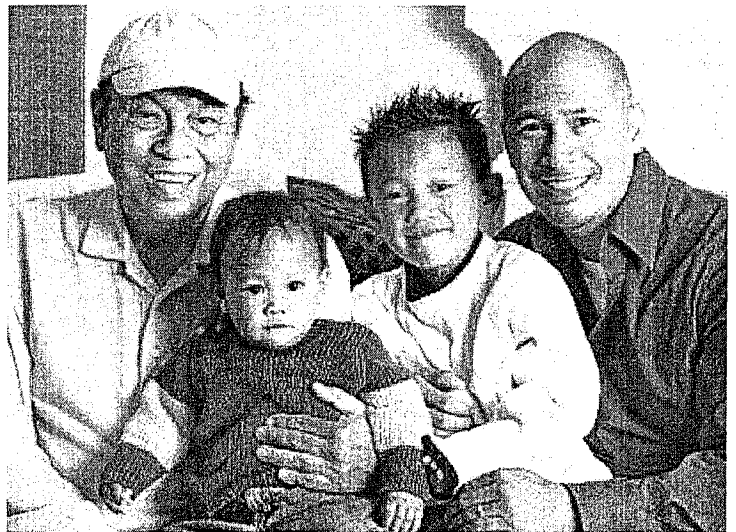
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Immediately following the summit in June 2007, the Attorney General formed work groups to begin the process of identifying viable solutions to the issues and barriers identified by participants. The barriers and issues fell into six basic categories. Again professionals from around the state were invited to participate in a series of meetings to distill the issues and identify solutions. The kickoff meeting was held in the Seattle Offices of the Attorney General on Sep. 25, 2007. The meeting in which the groups presented their final reports was held on May 9, 2008.





WORK GROUP SUMMARIES

WASHINGTON STATE VULNERABLE ADULT INITIATIVE'S PROFESSIONAL COORDINATION AND COMMUNICATION WORK GROUP (PCCWG)

BACKGROUND

The Professional Coordination and Communication Work Group took on the following issues identified at the June summit:

- A lack of appropriate funding and resources needed to address the needs of vulnerable adults in the state of Washington.
- Need for better education, training and oversight for all professions and agencies involved in providing care for vulnerable adults.
- Poor coordination between the civil and criminal system leads to cases that fall through the cracks.
- A burdensome and inefficient complexity caused by multiple systems and agencies involved in providing prosecution of abusers.
- The low level of reporting of legitimate cases of abuse.

RECOMMENDATIONS

1. Create, formalize, staff and fund a permanent statewide coalition for the prevention of vulnerable adult abuse, criminal mistreatment, neglect and financial exploitation to serve as a center for research, policy development, training, coordination and resources.
 - a) Research and develop topic-specific best practices, advocate for funding, develop guidelines for preventing the abuse of vulnerable adults and recommend legislation and/or provide advice regarding proposed legislation.
 - b) Coordinate, train and support pilot projects that aim to improve the speed and quality of the investigation of elder abuse. Pilot projects will create and monitor teams of specialized, multi-disciplinary investigative and intervention teams called to sites of vulnerable adult complaints. Teams will provide holistic, individualized investigation, protection and intervention. Separate pilot programs will be established to respond to abuse or neglect and financial exploitation, reflecting similar programs in other states.

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2. Create and support regional, multi-disciplinary task forces to address abuse, neglect, criminal mistreatment and exploitation of vulnerable adults, as well as prevention strategies.

- a) Address regional issues regarding vulnerable adult abuse, neglect and financial exploitation from a multi-disciplinary approach.
- b) Develop regional response and investigation/intervention teams, comprised of representatives of the AGO, law enforcement, prosecutors, DSHS, the medical community, financial institutions, academia, courts, long-term care providers, guardians and other relevant community members.



- c) Create a criminal mistreatment review panel to:
 - Staff difficult cases;
 - Support prosecutors; and
 - Increase the base of knowledge by learning from actual cases as shared by American Medical Association representatives, physicians, nurses and advanced registered nurse practitioners.
- d) Create a death/mortality investigation and review panel to investigate deaths of the elderly and/or vulnerable adults who might otherwise be overlooked and develop criteria for determining which cases should be reviewed.
- e) Create a professional training panel to increase awareness through increased, targeted training.
- f) Create a community training panel to increase community awareness of these issues through targeted forums, meetings and presentations.
- g) Create an investigation and prosecution panel to discuss and track cases involving vulnerable adults.

3. Establish a regional gatekeeper program with regional implementation and funding. This program would locate impaired and at-risk elders who live at home. Since so many victims live in isolated circumstances, this program would train and encourage employees of corporations, businesses and other community organizations to identify at-risk older individuals in desperate need of assistance and make referrals to appropriate investigative agencies or resources. Gatekeeper programs are a cost-effective option for increasing the network of those trained to identify at-risk vulnerable adults and make referrals.

a) Provide statewide training of community gatekeepers. Gatekeepers will be trained to recognize items or situations that may indicate an older person is at risk: personal appearance, home condition, cognitive/emotional/mental status, physical status, social problems, personality changes, financial problems, caregiver stress, substance use and suicide risk symptoms.

b) Maintain a list of potential gatekeepers, including: local utility employees, residential property appraisers employed by county assessors, bank personnel, apartment and mobile home managers, postal carriers, fuel oil dealers, police, sheriff and fire department personnel, pharmacists, cable television company staff, ambulance company staff and code enforcers.

RECOMMENDATION: Establish a permanent statewide coalition to defend against vulnerable adult abuse.

c) Enlist and educate postal workers to identify at-risk adults.



DEPARTMENT OF SOCIAL AND HEALTH SERVICES (DSHS)/ADULT PROTECTION SERVICES (APS) PROTECTION SUBGROUP

BACKGROUND

The Department of Social and Health Services (DSHS)/Adult Protection Services (APS) Subgroup took on the following issues identified at the June summit:

- The inability or unwillingness of victims to protect themselves.
- Lack of clear legal definitions across professions to adequately prosecute offenders.
- Lack of a solid definition for what is considered "self neglect."

RECOMMENDATIONS

1. Develop risk assessment instruments that are both reliable (with scores consistent over time) and valid (measuring what they are designed to measure). Effective risk assessment instruments would:

- a) Assess the risk levels of vulnerable adults at APS intake.
- b) Assess future risk levels and needed safeguards at the closure of APS cases.

The subgroup recommends legislation that would authorize the Washington State Institute for Public Policy to study risk assessment instruments and prepare a report to the Legislature.

2. Support a bill that would require APS to develop and maintain a publicly searchable database of perpetrators of the abandonment, abuse, neglect and exploitation of vulnerable adults that would:

- a) Allow for the simple verification of whether a proposed caregiver or employee has an APS finding.

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RECOMMENDATION:
***Develop a publicly
searchable database
of perpetrators.***

- b) Require DSHS to develop a feasibility study on linking all DSHS perpetrator databases, thereby making them publicly accessible and promoting public accountability.

3. In order to better identify and assist victims, a formal review of the current legal definition of "vulnerable adult" is needed.

Formal stakeholder group meetings should be held to consider these factors:

- AARP/ages, 60+, 65+ or 66+ as a partial predictor of vulnerability.
- Hearing impairment.
- Vision impairment.
- Persons living with multiple sclerosis.
- Persons living with diabetes.
- Persons living with mental health issues.
- Persons suffering from substance abuse.



GUARDIANSHIP PROTECTION SUBGROUP

BACKGROUND

The guardianship subgroup took on the following issues identified at the June summit:

- Lack of appropriate funding and resources needed to address the guardianship needs of vulnerable adults in the state of Washington.
- Limited legal ability of guardians to intervene when a higher level of care is necessary.
- Better balancing the victim's desire for independence and the need to protect the victim, particularly when the caregiver is the perpetrator.
- Insufficient mental health intervention services to respond to the needs of vulnerable adults.

RECOMMENDATIONS

1. Address a the shortage of guardians:

- a) Expand and fund the Office of Public Guardianship.
- b) The Office of Public Guardianship should conduct a community education and recruitment program to find more guardians for smaller counties and more volunteers for pro bono guardianships overall.

2. Address inadequate and inconsistent guardianship laws by developing a stakeholder work group to consider updating guardianship-related statutes and regulations.

3. Reduce the instances of perpetrators of abuse, neglect or financial exploitation from being appointed as guardians by supporting changes to RCW 11.88.045. These changes will clarify that the alleged incapacitated person is entitled to request a jury trial only on the issue of incapacity, but may request an evidentiary hearing if the issue to be decided is who should be appointed as guardian.

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4. **Better protect seniors with dementia by changing the involuntary detention process.** Develop a stakeholder work group to help craft legislation that allows for a separate involuntary detention process for vulnerable adults to facility settings when they are diagnosed with dementia. This would address a population that appears to be covered by the guardianship statutes but is not being served by the mental health community because dementia is not considered to be a “mental disorder” in most counties.



COMMUNITY AWARENESS AND TRAINING WORK GROUP

BACKGROUND

The Community Awareness and Training Work Group took on the following issues identified at the June summit:

- Members of the general public have a difficult time accurately identifying the abuse of vulnerable adults.
- When abuse is suspected, information is not readily available about how to report it.
- Physicians are failing to recognize the signs of abuse in vulnerable adults.
- Victims' families need more information about how to access available services.
- The public has a lack of awareness of domestic violence in later life.
- Self-reporting of abuse is difficult or impossible for vulnerable adults.

RECOMMENDATIONS

1. **Develop a curriculum to educate gatekeepers.** Gatekeepers — those in the best positions to recognize victims — must be identified and given uniform training. Training should provide information about how to identify abuse and how to report it. Easy-to-access materials should be created and distributed to gatekeepers. This work group is developing a PowerPoint presentation for wide distribution.
2. **Educational flyers should be developed and distributed to the public via multiple channels, including:**
 - a) Inside utility bills;
 - b) At food banks;
 - c) Posted in public restrooms;

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d) In apartment complexes and low-income housing projects and;

e) In doctors' offices.

3. Create public service announcements to run statewide. In order to increase general awareness about how to identify and report the abuse of vulnerable adults, PSAs should be funded and produced for distribution to local television, radio stations and print and online publications. PSAs should be divided into modules addressing financial exploitation, domestic violence and self-neglect.



FINANCIAL EXPLOITATION WORK GROUP

BACKGROUND

The Financial Exploitation Work Group took on the following issues identified at the summit:

- The current response time and coordination of agencies, law enforcement and prosecution is too slow to properly serve victims of abuse.
- Better training and education is needed in both the public and private sectors to aid in prosecutions. Specifically, programs are needed that focus on how to report and investigate financial crimes.
- Better partnerships are needed between banks and the police in order to identify and report financial exploitation.
- Seniors have a fear of guardianships and a loss of independence, which chills reporting.
- Some organizations and individuals, including family members, are reluctant to report financial crimes.
- Financial exploitation is difficult to detect, prevent and prosecute because of the difficulty in getting access to records and documents.

RECOMMENDATIONS

- 1) **Amend the statute to simplify the definition of financial exploitation.** The Vulnerable Adult Statute defines financial abuse in a way that creates barriers to investigation and protective activities.
- 2) **Draft legislation that would create a Protective Power of Attorney.** This document should contain more procedural and substantive protections for the vulnerable adult. To date, power of attorney forms have often been used to financially

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RECOMMENDATION: Develop a program to help financial institutions identify and report financial exploitation.



exploit vulnerable adults. This committee drafted a sample of what the new form should look like.

3) Engage financial institutions, the Department of Financial Institutions and law enforcement with the goal of creating step-by-step protocols and guidelines for setting up accounts and dealing with suspected abuse. Education — even mandatory education for bank tellers — should be considered. At present, joint bank accounts are used by family members and acquaintances to exploit vulnerable adults.

4) Expand standardized education programs to be used by financial institutions statewide. These programs will help employees of financial institutions spot and appropriately react to financial exploitation. Employees at financial institutions have communicated a strong desire to respond to the exploitation they witness, but suggest that some fail to do so due to a lack of training, knowledge and specific guidance.



LONG-TERM CARE WORK GROUP

BACKGROUND

The Long-Term Care Work Group took on the following issues identified at the summit:

- Vulnerable adults in long-term care facilities are exposed to risk because there are too few resources dedicated to checking the backgrounds of caregivers.
- The patchwork of rules regarding what disqualifies a caregiver from working with certain kinds of patients creates a barrier to creating a safe environment for vulnerable adults.
- Government bureaucracy is a barrier to checking the backgrounds of caregivers.
- Funding for Medicaid rates and other services is too low to provide adequate care for vulnerable adults.

RECOMMENDATIONS

- 1) **Annual background checks** should be required on people who provide direct care to vulnerable adults in a long-term setting. These checks are currently only required every two years. Special concern should be paid to individuals providing in-home care and who operate adult family homes or boarding homes.
- 2) **Disqualifying crimes should be the same across settings.** There are currently different disqualifying crimes for people who provide services to children, the disabled and for vulnerable adults. Disqualifying crimes should be the same across settings.
- 3) **Electronic portal for background checks.** DSHS is working on a pilot program to permit background checks to be conducted electronically. DSHS personnel will be able to perform background checks using an internal Web site at a field office. This program should be made accessible to outside facilities through the Internet as soon as possible.
- 4) **Ability to "flag" individuals.** Automatic alerts should be sent to vulnerable adult caregiver facilities when someone working for them has a change of status, i.e. they have a new disqualifying crime or a substantiated finding of abuse, neglect or exploitation.
- 5) **Payment rates should be analyzed.** Funding is too low to provide for adequate long-term care for those suffering from mental health issues. In addition, the flat Medicaid rate for all guardians is too low for increasingly complex cases.

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THE NEXT STEPS

THE NEXT STEPS TO PROTECT VULNERABLE ADULTS

THE SUMMIT WORK GROUPS' LEGISLATIVE RECOMMENDATIONS

After developing and refining proposals for nearly a year, summit work groups reconvened in May 2008 and suggested that all or some of the following recommendations be proposed to the legislature in 2009:

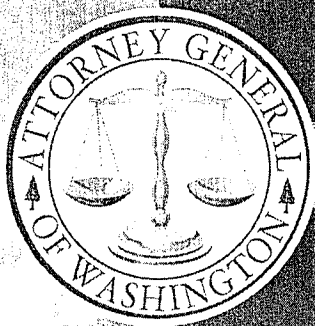
- Add mandatory sentencing enhancements (with medical exceptions) for crimes against victims over age 65 or who meet the definition of a vulnerable adult in Chapter 74.34 RCW, Abuse of Vulnerable Adults Act.
- Make employees of financial institutions mandatory reporters of the financial exploitation of vulnerable adults.
- Strengthen protections for vulnerable adults by clarifying definitions in the vulnerable adult statutes and by improving coordination between reporters of abuse, law enforcement and Adult Protective Services in the relevant RCW (74.34).
- Allow for greater public disclosure of APS information.
- Create a publicly searchable database of perpetrators of vulnerable adult abuse and neglect.

During the coming months, the AGO will work with the Governor's Office, The Department of Social and Health Services, other state agencies and the Legislature to develop omnibus vulnerable adult legislation based on the recommendations of summit and work group participants. Leaders and contributors to the Vulnerable Adult Summit and work groups created as a result of the summit will play key roles advising legislators, testifying in committee hearings and participating in lobbying efforts. Our goal is to have a comprehensive bill signed by the governor in 2009.

STATEWIDE COALITION

The AGO will facilitate meetings between members of local vulnerable adult task forces, The Department of Social and Health Services and other stakeholders to investigate the feasibility of creating a permanent statewide coalition for the prevention of vulnerable adult abuse, criminal mistreatment, neglect and financial exploitation. This coalition will continue to monitor emerging issues impacting vulnerable adults, while advising law enforcement, legislators and care providers on strategies to address those issues. Our goal is to have a permanent coalition in place by the end of 2009.





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Rec. 9-18-08

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